

STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
OLYMPIA, WASHINGTON

REQUEST FOR PROPOSALS (RFP)

**Convenience Contract for Bond Studies for Washington State
Department of Transportation Large Construction Projects**

RFP NO. 11-200

NOTE: *If you download this RFP from the OFM website located at <http://www.ofm.wa.gov/contracts/procurement/postings.asp>, you are responsible for sending your name, address, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/agency answers.*

**PROJECT TITLE: Convenience Contract for Bond Studies for Washington State
Department of Transportation Large Construction Projects**

**PROPOSAL MUST BE RECEIVED BY THE RFP COORDINATOR BY: August 17, 2010,
12:00 Noon, Pacific Daylight Savings Time, Olympia, Washington, USA.**

E-mailed bids will be accepted. Faxed bids and hard copy bids will not be accepted.

**ESTIMATED TIME PERIOD FOR CONTRACT: September 20, 2010 – September 19,
2012. The Office of Financial Management (OFM) reserves the right to extend the
contract for up to three additional one-year periods at the sole discretion of OFM.**

CONSULTANT ELIGIBILITY: This procurement is open to those consultants that
satisfy the minimum qualifications stated herein and that are available for work in
Washington State.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Consultants
3. Proposal Contents
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 - B. Surety Bond Risk Assessment Guidelines
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1. INTRODUCTION

1.1 Purpose and Background

The Office of Financial Management, Risk Management Division, hereinafter referred to as AGENCY, is soliciting proposals to provide consultant services. In the 2009 legislative session, Substitute Senate Bill 5499 was enacted. The legislation authorizes the Washington State Department of Transportation to allow contractors on highway construction projects of \$250 million or more to provide surety bonds at less than 100 percent of the full contract price. Substitute Senate Bills 5499 reads, in part:

Before the secretary (of Transportation) may approve any bond authorized for less than the full contract price of a project, the Office of Financial Management shall review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected.

AGENCY intends to award one convenience contract to provide the services described in this RFP. (See Section 1.7, Definitions, Convenience Contract).

1.2 OBJECTIVES AND SCOPE OF WORK

RCW 39.08.030(3) authorizes the Washington State Department of Transportation (WSDOT) to allow contractors on highway construction projects of \$250 million or more to provide surety bonds at less than 100 percent of the contract price if all of the state's exposure to loss can be protected by the smaller bond. Before the Secretary of WSDOT can approve such a bond, the Office of Financial Management (OFM) must review and approve the analysis supporting the amount of the bond "to ensure that one hundred percent of the state's exposure to loss is adequately protected."

1.2.A SR 520 Evergreen Point Floating Bridge/Initial Project under the Convenience Contract:

WSDOT will be preparing an analysis of the bond amount for the design and construction of the new SR 520 Evergreen Point Floating Bridge across Lake Washington in King County, Washington. This work includes replacement of the existing floating bridge and fixed structure approaches (landings). Engineer's estimated cost for the project is in the range of \$700 million to \$1 billion. The WSDOT's analysis will follow the Surety Bond Risk Assessment Guidelines approved by the Office of Financial Management and any amendments to those guidelines. The Surety Bond Risk Assessment Guidelines, Exhibit B, is attached hereto and incorporated by reference.

The AGENCY requires a contractor to review the analysis for the SR 520 Evergreen Floating Bridge project conducted by the Washington State Department of Transportation to support the amount of the bond set by WSDOT to ensure that one hundred percent of the state's exposure to loss on the project is adequately protected.

The review of the analysis for the SR 520 Evergreen Floating Bridge project shall include, but not be limited to:

- Analyze and review State of Washington surety statutes and Surety Bond Risk Assessment Guidelines, and other project specific data, including the Engineer's Estimate.
- Address existing regulatory and commercial requirements/practices relative to the appropriate surety requirement for the State's project;
- Provide guidance to ensure bid competitiveness is sustained without sacrificing financial assurance needed to protect the State
- Provide guidance on the size of the payment and performance bonds after discussions with the world surety markets
- Provide guidance and recommendations for areas of potential elevated risk as part of the Request for Qualifications/Quotations (RFQQ) and Request for Proposal (RFP).

Based on the initial review of the analysis report, the AGENCY in conjunction with the selected contractor shall decide whether additional tasks are necessary to complete the review. Those additional tasks may include, but are not limited to:

- The selected contractor will review additional documentation deemed appropriate by the AGENCY.
- The selected contractor will meet with representatives from the Washington State Department of Transportation and the AGENCY, as deemed necessary by the AGENCY.

A draft report is due to the AGENCY for review and comment by October 20, 2010. The AGENCY will provide review and comment within approximately two business days of receipt of the draft report.

One copy of the final report approved by the AGENCY plus an electronic copy must be delivered to the AGENCY by October 27, 2010.

1.2.B Extra Services: The AGENCY may require additional related services. These are to be considered Extra Services under this section. In the event Extra Services are required, the contract will be amended to provide specific details, including deliverables with due dates and cost.

It is anticipated that all services under the convenience contract will be provided in Olympia, Washington or in Seattle/King County, Washington.

1.3 QUALIFICATIONS

Mandatory qualifications for potential contractors to have are:

- The Consultant must be licensed to do business in the State of Washington or provide a commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- The Consultant must have ten (10) years interdisciplinary experience and expertise in highway construction projects including:
 1. Schedule analysis and validation;
 2. Cost estimate assessment;
 3. Identification and quantification of most likely potential problems and/or disputes; and
 4. Determination of maximum probably peak financial exposure under the contract for surety and bond calculation purposes

1.4 FUNDING

The AGENCY has budgeted an amount not to exceed One Hundred Thousand Dollars (\$100,000) for the convenience contract awarded through this RFP. This amount represents the maximum capacity for use under the convenience contract over a two year period. The AGENCY at its discretion may amend any awarded convenience contract to add funding in the event additional funding beyond the \$100,000 maximum capacity is required. For each engagement a Statement of Work will be executed between the AGENCY and the selected CONTRACTOR to document the maximum dollar value associated with that engagement. The combined total of all engagements during the two year contract period is not expected to exceed \$100,000.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about September 20, 2010 and to end on September 19, 2012. Amendments extending the period of performance, if any, shall be at the sole discretion of the AGENCY. The AGENCY reserves the right to extend the contract for up to three additional one-year periods at the sole discretion of OFM.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting a proposal that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFP include:

Agency – The Office of Financial Management is the agency of the state of Washington that is issuing this RFP.

Apparent Successful Contractor – The consultant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Consultant – Individual or company interested in the RFP and that may or does submit a proposal in order to attain a contract with the AGENCY.

Contractor – Individual or company whose proposal has been accepted by the AGENCY and is awarded a fully executed, written contract.

Convenience Contract – A contract to be used by the AGENCY on an as-needed basis as WSDOT requires bond studies for its large construction projects. The convenience contract provides the AGENCY ready access to expertise and resources as the need may arise. The convenience contract does not guarantee the selected contractor any specific amount of work. For each engagement a Statement of Work between the AGENCY and the selected contractor will be executed. The Statement of Work will supplement the convenience contract. The Statement(s) of Work will indicate the project or task objective(s), period of performance, level of personnel required, deliverables with due dates, and dollar value for the services.

Proposal – A formal offer submitted in response to this solicitation.

Proposer - Individual or company that submits a proposal in order to attain a contract with the AGENCY.

Request for Proposals (RFP) – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

1.8 ADA

The AGENCY complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFP Coordinator to receive this Request for Proposals in Braille or on tape.

2. GENERAL INFORMATION FOR CONSULTANTS

2.1. RFP COORDINATOR

The RFP Coordinator is the sole point of contact in the AGENCY for this procurement. All communication between the Consultant and the AGENCY upon release of this RFP shall be with the RFP Coordinator, as follows:

Jan McMullen
E-mail: jan.mcmullen@ofm.wa.gov
Phone No.: (360) 725-5260

Any other communication will be considered unofficial and non-binding on the AGENCY. Consultants are to rely on written statements issued by the RFP Coordinator. Communication directed to parties other than the RFP Coordinator may result in disqualification of the Consultant.

2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	July 27, 2010
Question & answer period	July 27, 2010 – August 10, 2010
Issue last addendum to RFP	August 12, 2010
Proposals due	August 17, 2010 at noon Pacific Daylight Savings Time, in Olympia, WA
Evaluate proposals	August 18 -20, 2010
Conduct oral interviews with finalists, if required	August 24, 2010
Announce “Apparent Successful Contractor” and send notification via fax or e-mail to unsuccessful proposers	August 25, 2010
Hold debriefing conferences (if requested)	August 26, 2010 – September 2, 2010
Begin contract work	September 20, 2010

The AGENCY reserves the right to revise the above schedule.

2.3. SUBMISSION OF PROPOSALS

The proposal must be received by the RFP Coordinator no later than 12:00 noon, Pacific Daylight Savings Time in Olympia, Washington, on August 17, 2010.

Proposals must be submitted electronically as an attachment to an e-mail to Jan McMullen, the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be on Microsoft Word format or PDF. Zipped files cannot be received by the AGENCY and cannot be used for submission of proposals. The cover submittal letter and the Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Consultant to the offer. The AGENCY does not assume responsibility for problems with Consultant's e-mail. If the AGENCY'S email is not working, appropriate allowances will be made.

Hard copy proposals will not be accepted.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. **Late proposals will not be accepted and will be automatically disqualified from further consideration, unless the AGENCY'S e-mail is found to be at fault.** All proposals and any accompanying documentation become the property of the AGENCY and will not be returned.

2.4. PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of the AGENCY. All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Director of the AGENCY, or his Designee, and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Consultant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information," the AGENCY will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, the AGENCY will release the requested information on the date specified. If a Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, the AGENCY shall maintain the confidentiality of the Consultant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

2.5. REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all individuals, who have made the RFP Coordinator aware of their interest. Addenda will also be published on <http://www.ofm.wa.gov/contracts/procurement/postings.asp>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFP and will be placed on the website.

If you downloaded this RFP from the OFM website located at: <http://www.ofm.wa.gov/contracts/procurement/postings.asp>, you are responsible for sending your name, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP addenda.

The AGENCY also reserves the right to cancel or to reissue the RFP in whole or in part, prior to execution of a contract.

2.6. MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE).

Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

The established annual procurement participation goals for MBE is 10% and for WBE, 4%, for this type of project. These goals are voluntary. For information on certified firms, consultants may contact OMWBE at 360/753-9693 or <http://www.omwbe.wa.gov>.

2.7. ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by AGENCY from the due date for receipt of proposals.

2.8. RESPONSIVENESS

All proposals will be reviewed by the RFP Coordinator to determine compliance with administrative requirements and instructions specified in this RFP. The Consultant is specifically notified that failure to comply with any part of the RFP may result in rejection of the proposal as non-responsive.

The AGENCY also reserves the right at its sole discretion to waive minor administrative irregularities.

2.9. MOST FAVORABLE TERMS

The AGENCY reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms which the Consultant can propose. There will be no best and final offer procedure. The AGENCY does reserve the right to contact a Consultant for clarification of its proposal.

The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. Contract negotiations may incorporate some or all of the Consultant's proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to the AGENCY.

2.10. CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit C. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. The AGENCY will review requested exceptions and accept or reject the same at its sole discretion.

2.11. COSTS TO PROPOSE

The AGENCY will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP

2.12. NO OBLIGATION TO CONTRACT

This RFP does not obligate the state of Washington or the AGENCY to contract for services specified herein.

2.13. REJECTION OF PROPOSALS

The AGENCY reserves the right at its sole discretion to reject any and all proposals received without penalty and not to issue a contract as a result of this RFP.

2.14. COMMITMENT OF FUNDS

The Director of the AGENCY or his delegate is the only individual who may legally commit the AGENCY to the expenditures of funds for a contract resulting from this RFP. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.15. ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful contractor will be provided a form to complete with the contract to authorize such payment method.

2.16. INSURANCE COVERAGE

The Contractor is to furnish the Agency with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to the Agency within fifteen (15) days of the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance: In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, Office of Financial Management, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
2. **Cancellation.** State of Washington, Office of Financial Management, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference the state's contract number and the agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by Office of Financial Management Risk Manager, or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC
5. **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be written in English and submitted electronically in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP);
2. Technical Proposal for the Initial Project: SR 520 Evergreen Floating Bridge Project;
3. Management Proposal for consultant services in general and for the Initial Project: SR 520 Evergreen Floating Bridge Project; and,
4. Cost Proposal for the Initial Project: SR 520 Evergreen Floating Bridge Project.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

3.1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Consultant does not have a UBI number, the Consultant must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
5. Location of the facility from which the Consultant would operate.
6. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by the AGENCY that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

3.2. TECHNICAL PROPOSAL for the Initial Project under the Convenience Contract: SR 520 Evergreen Point Floating Bridge (SCORED)

The Technical Proposal must contain a comprehensive description of the services for the Initial Project under the Convenience Contract: SR 520 Evergreen Point Floating Bridge. The Technical Proposal must include the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant's proposed approach and methodology for the SR 520 Evergreen Point Floating Bridge project.
- B. Work Plan** - Include all project requirements and the proposed tasks, services, activities, etc., necessary to accomplish the scope of the SR 520 Evergreen Point Floating Bridge project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of AGENCY staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule** - Include a project schedule indicating when the elements of the work for the SR 520 Evergreen Floating Bridge project will be completed in order to meet the deliverable schedule set forth in Section 3.2.D below.
- D. Deliverables** – Fully describe deliverables to be submitted under the proposed contract. The due dates for the SR 520 Evergreen Point Floating Bridge deliverables are as follows:

The draft Surety Bond Analysis must be received by AGENCY for AGENCY review and comment no later than _____. The AGENCY will provide review and comment within approximately two business days of receipt of the draft report.

One copy of the final Surety Bond Analysis approved by the AGENCY plus an electronic copy must be delivered to the AGENCY by _____.

3.3. MANAGEMENT PROPOSAL in General and for the Initial Project under the Convenience Contract: SR 520 Evergreen Point Floating Bridge (SCORED)

Project Management (SCORED)

- 1. Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used for the potential convenience contract with a commitment that the identified structure/controls will be utilized during the course of the SR 520 Evergreen Floating Bridge project, including any subcontractors. Include who within the firm will have prime responsibility and final authority for the work.
- 2. Staff Qualifications/Experience** - Identify staff, including subcontractors, who will be assigned to the potential convenience contract with a commitment that those staff will provide the services required by the SR 520 Evergreen Floating Bridge project. Indicate the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Identify the lead staff person.

The lead staff person must have a minimum of _____ years' interdisciplinary experience and expertise in highway construction projects including:

- (1) Schedule analysis and validation;
- (2) Cost estimate assessment;
- (3) Identification and quantification of most likely potential problems and/or disputes; and
- (4) Determination of maximum probable peak financial exposure under the contract for surety and bond calculation purposes.

Provide resumes for the named staff, which include information on the individual's particular skills related to the SR 530 Evergreen Floating Bridge project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the

assigned SR 520 Evergreen Floating Bridge project work. Any staff substitution must have the prior approval of the AGENCY.

B. Experience of the Consultant (SCORED)

1. Indicate the experience the Consultant and any subcontractors have in similar projects.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five (5) years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

D. References

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references (non-bidder owned) for the Consultant and three (3) business references for the lead staff person for whom the Consultant and lead staff person have provided similar expertise during the past five (5) years preceding the bid due date. Do not include current AGENCY staff as references. The Consultant and the lead staff person must grant permission to the AGENCY to contact the references and others who may have pertinent information regarding the Consultant's and the lead staff person's qualifications and experience to perform the services required by this RFP. The AGENCY may evaluate references at the AGENCY'S discretion.

C. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. The AGENCY will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.
5. If any of Consultant's staff member(s) who will perform work on this contract have retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, please note his/her name(s).

E. OMWBE Certification (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Womens Business Enterprises (OMWBE) if certified minority-owned firm and/or women-owned firm(s) will be participating on this project. For information: <http://www.omwbe.wa.gov>.

3.4. COST PROPOSAL for the Initial Project under the Convenience Contract: SR 520 Evergreen Point Floating Bridge (SCORED)

Non-responsive proposals will not be evaluated.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

A. Identification of Costs (SCORED)

A.1 Costs for SR 520 Evergreen Floating Bridge Project Referenced in Sections 1.1 and 1.2

Provide a **fixed price cost** for the SR 520 Evergreen Floating Bridge project.

1. Provide a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the objectives and produce the deliverables under the contract.
2. Provide the proposed number of hours per person with job title and their hourly rate for the SR 520 Evergreen Floating Bridge project.
3. Provide a table showing the anticipated number of hours each assigned staff person is expected to devote to the SR 520 Evergreen Floating Bridge project.

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

Expenses will not be reimbursed as a separate item for the SR 520 Evergreen Floating Bridge project.

A.2 Costs for Extra Services Referenced in Section 1.2

The cost proposal must separately state an all inclusive hourly rate by job title for the Extra Services contemplated in Section 1.2. The hourly rate must include any and all expenses. In the event Extra Services are utilized, expenses will not be reimbursed as a separate item.

Failure to provide an all inclusive hourly rate for Extra Services will result in the proposal being deemed non-responsive and the proposal will not be evaluated.

No points will be awarded for the Extra Services cost proposal.

A.3 Computation of the Fixed Price Cost for SR 520 Evergreen Floating Bridge Project.

The maximum points available for the fixed price for the SR 520 Evergreen Floating Bridge project is ____ points. The score for the fixed price cost proposal will be computed by dividing the lowest fixed price cost bid received by the Consultant's fixed price cost bid. Then the resultant number will be multiplied by the maximum possible points for the cost section.

4. EVALUATION AND CONTRACT AWARD

4.1. EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team(s), to be designated by the AGENCY, which will determine the ranking of the proposals.

Items in Section 3, Proposal Contents, marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

AGENCY, at its sole discretion, may elect to select the top-scoring firms as finalists for an oral presentation.

AGENCY reserves the right to award the contract to the Consultant whose proposal is deemed to be in the best interest of the AGENCY and the state of Washington.

4.2. EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal –45%	45 points
Project Approach/Methodology	10 points (maximum)
Quality of Work Plan	15 points (maximum)
Project Schedule	10 points (maximum)
Project Deliverables	10 points (maximum)
Management Proposal – 35%	35 points
Project Team Structure and Internal Controls	10 points (maximum)
Staff Qualifications/Experience	10 points (maximum)
Experience of the Consultant	15 points (maximum)
Cost Proposal – 20%	20 points
<hr/>	
TOTAL	100 POINTS

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

The AGENCY may after evaluating the written proposals elect to schedule oral presentations of the finalists. Should oral presentations become necessary, the AGENCY will contact the top-scoring firm(s) to schedule a time and location for an oral presentation on August 24, 2010. If selected for an oral presentation, both the Consultant and lead staff person must participate in the oral presentation. Oral presentations, if any, will only be conducted on August 24, 2010. Consultants should plan to be available on August 24, 2010 should they be selected for an oral presentation. The selected Consultant(s) will be allowed fifteen (15) minutes for a presentation and the remaining forty-five (45) minutes will be used for questions and answers. Commitments made by the Consultant at the oral presentation, if any, will be considered binding.

The oral presentation will determine the Apparently Successful Contractor, based on the evaluation team's assessment from the oral presentation of the Consultant's overall knowledge, skills and ability to conduct the required services set forth in Section 1.2, Objectives and Scope of Work.

4.4 NOTIFICATION TO PROPOSERS

The AGENCY will notify the Apparently Successful Contractor of their selection in writing upon completion of the evaluation process. Individuals or firms whose proposals were not selected for further negotiation or award will be notified separately by e-mail or facsimile.

4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within two (2) business days after the Unsuccessful Consultant Notification is e-mailed or faxed to the Consultant. Debriefing requests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the transmittal of the Unsuccessful Consultant Notification. The debriefing must be held within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

- Evaluation and scoring of the firm's proposal;
- Critique of the proposal based on the evaluation;
- Review of proposer's final score in comparison with other final scores without identifying the other firms.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

4.6 PROTEST PROCEDURE

Protests may be made only by Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the third business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

Consultants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Consultants under this procurement.

All protests must be in writing, addressed to the RFP Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFP number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

- A matter of bias, discrimination or conflict of interest on the part of an evaluator;
- Errors in computing the score;
- Non-compliance with procedures described in the procurement document or AGENCY policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator's professional judgment on the quality of a proposal, or 2) AGENCY'S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by the AGENCY. The AGENCY Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within five (5) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Consultant that also submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold the AGENCY's action; or
- Find only technical or harmless errors in the AGENCY's acquisition process and determine the AGENCY to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide the AGENCY options which may include:
 - Correct the errors and re-evaluate all proposals, and/or
 - Reissue the solicitation document and begin a new process, or
 - Make other findings and determine other courses of action as appropriate.

If the AGENCY determines that the protest is without merit, the AGENCY will enter into a contract with the apparently successful contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Surety Bond Risk Assessment Guidelines

Exhibit C Personal Service Contract Format including General Terms and Conditions (GT&Cs)

EXHIBIT A

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by the AGENCY without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that the AGENCY will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of the AGENCY, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant the AGENCY the right to contact references and other, who may have pertinent information regarding the ability of the Consultant and the lead staff person to perform the services contemplated by this RFP.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See Section 2.10, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

On behalf of the Consultant submitting this proposal, my name below attests to the accuracy of the above statements.

We are submitting a scanned signature of this form with our electronic proposal.

Signature of Proposer

Title

Date

**CONTRACT FOR PERSONAL SERVICES
BETWEEN
THE STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT
AND**

This Contract is made and entered into by and between the state of Washington, Office of Financial Management, hereinafter referred to as the "AGENCY", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Name
Address

Phone:
E-mail Address

Washington State UBI No. _____

Federal ID No. _____

PURPOSE

Under the terms of this convenience contract the CONTRACTOR's services will be used on an as-needed basis as WSDOT requires bond studies for its large construction projects. This convenience contract provides the AGENCY ready access to expertise and resources as the need may arise. This convenience contract does not guarantee the CONTRACTOR any specific amount of work. For each engagement a Statement of Work between the AGENCY and the CONTRACTOR will be executed. The Statement of Work will supplement the convenience contract. The Statement(s) of Work will indicate the project or task objective(s), period of performance, level of personnel required, deliverables with due dates, and dollar value for the services.

SCOPE OF WORK FOR THE INITIAL PROJECT

The CONTRACTOR will provide services, and otherwise do all things necessary for or incidental to the performance of the Initial Project: SR 520 Evergreen Floating Bridge Project, as set forth in Request for Proposals (RFP) No. 11-200, Exhibit B, and the CONTRACTOR's Proposal dated _____, Exhibit C. Exhibits B and C are attached hereto and incorporated by reference.

Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the AGENCY and the CONTRACTOR, and specific obligations of both parties.

The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the Contract Manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the period of performance under this contract will be from _____, date of execution, or date of OFM approval, whichever is later, through _____, unless sooner terminated or extended as provided herein.

OFM FILING REQUIREMENT

Under the provisions of Chapter 39.29 RCW and/or ESHB 2921, this personal service contract is required to be filed with the Office of Financial Management (OFM). No contract required to be so filed is effective and no work shall be commenced nor payment made until notification of the earliest start date and approval by OFM. In the event OFM fails to approve the contract, the contract shall be null and void.

COMPENSATION AND PAYMENT

The AGENCY has budgeted an amount not to exceed One Hundred Thousand Dollars (\$100,000) for this convenience contract. This amount represents the maximum capacity for use under the convenience contract over a two year period. The AGENCY at its discretion may amend this convenience contract to add funding in the event additional funding beyond the \$100,000 maximum capacity is required.

For each engagement a Statement of Work will be executed between the AGENCY and the CONTRACTOR to document the maximum dollar value associated with that engagement. The combined total of all engagements during the two year contract period is not expected to exceed \$100,000.

AGENCY shall pay an amount not to exceed _____ Dollars (\$_____) for the performance of all things necessary for or incidental to the performance of services for the SR 520 Evergreen Floating Bridge project as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be in accordance with the following terms:

In the event Extra Services are required, an amendment to the contract will be executed. Extra Services will be billed at an hourly rate of \$_____.

Expenses will not be reimbursed as a separate item for the Feasibility Study, Assessment Report or Extra Services.

BILLING PROCEDURES AND PAYMENT

AGENCY will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the Contract Manager not more often than monthly. The invoices shall describe and document to the AGENCY'S satisfaction a description of the work performed, the progress of the project, and the fixed price fee. (Expenses will not be reimbursed as a separate item.) The invoice shall reference OFM Contract No. _____.

Payment shall be considered timely if made by the AGENCY within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The AGENCY may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the AGENCY.

INSURANCE

The CONTRACTOR shall provide insurance coverage as set forth in the Request for Proposals No.11-200. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontract, or agents of either, while performing under the terms of this contract.

The CONTRACTOR shall provide insurance coverage which shall be maintained in full force and effect during the term of this Contract.

CONTRACTOR shall submit to AGENCY within fifteen days of the contract effective date, a certificate of insurance which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for CONTRACTOR:	Contract Manager for AGENCY:
<u>Contract Manager Name</u> <u>Contractor Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: () _____ Fax: () _____ E-mail address:	Contract Manager Name Office of Financial Management P.O. Box Olympia, WA 98504- Phone: 360/_____ Fax: 360/_____ E-mail address:

ASSURANCES

AGENCY and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B - Request for Proposals No. 11-200
- Exhibit C – Contractor's Proposal dated _____
- Any other provision, term or material incorporated herein by reference or otherwise incorporated

ENTIRE AGREEMENT

This contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other statements or representations, written or oral, shall be deemed a part hereof.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the AGENCY'S authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _____ pages and three (3) attachment(s), is executed by the persons signing below who warrant that they have the authority to execute the contract.

CONTRACTOR NAME**OFFICE OF FINANCIAL MANAGEMENT**

Name and Title

Name and Title

Date

Date

GENERAL TERMS AND CONDITIONS

DEFINITIONS - As used throughout this contract, the following terms shall have the meaning set forth below:

- A. "Agency" shall mean the Office of Financial Management, of the state of Washington, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.
- B. "Agent" shall mean the Director, and/or the delegate authorized in writing to act on the Director's behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing service(s) under this contract, and shall include all employees of the Contractor.
- C. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.
- D. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers. Personal Information includes "Protected Health Information" as set forth in 45 CFR § 164.50 as currently drafted and subsequently amended or revised and other information that may be exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state and federal statutes.

ACCESS TO DATA - In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this contract to AGENCY, the Joint Legislative Audit and Review Committee, and the state auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

Contractor agrees to make personal information covered under this agreement available to Agency for inspection or to amend the personal information. Contractor shall, as directed by Agency, incorporate any amendments to the personal information into all copies of such personal information maintained by the Contractor or its subcontractors.

ADVANCE PAYMENTS PROHIBITED - No payments in advance of or in anticipation of goods or services to be provided under this contract shall be made by the Agency.

AMENDMENTS - This contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 - The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Agency.

ATTORNEYS' FEES - In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorneys fees and costs.

CONFIDENTIALITY / SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose any information concerning the Agency, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the Agency, or as may be required by law.

CONFLICT OF INTEREST - Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or performance under this contract.

In the event this contract is terminated as provided above, the Agency shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the Agency provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COPYRIGHT PROVISIONS - Unless otherwise provided, all Materials produced under this contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Agency. The Agency shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Agency effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the contract, but that incorporate pre-existing materials not produced under the contract, Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor shall exert all reasonable effort to advise the Agency, at the time of delivery of Materials furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. The Agency shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this contract. The Agency shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Agency shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES - Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with Agent.

1. The request for a dispute hearing must:

- Be in writing;
- State the disputed issue(s);
- State the relative positions of the parties;
- State the contractor's name, address, and contract number; and
- Be mailed to the agent and the other party's (respondent's) contract manager within 3 working days after the parties agree that they cannot resolve the dispute.

2. The respondent shall send a written answer to the requester's statement to both the agent and the requester within 5 working days.

3. The Agent shall review the written statements and reply in writing to both parties within 10 working days. The Agent may extend this period if necessary by notifying the parties.

4. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

INDEMNIFICATION - To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless state, agencies of state and all officials, agents and employees of state, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, and hold harmless the state shall not be eliminated or reduced by any actual or alleged concurrent negligence of state or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless state and its agencies, officials, agents or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR - The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the Agency. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the Agency or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

INDUSTRIAL INSURANCE COVERAGE - The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION AND REGISTRATION - The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this contract.

LIMITATION OF AUTHORITY - Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS - In the event of the Contractor's non-compliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

NONDISCRIMINATION - During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

OVERPAYMENTS AND ASSERTION OF LIEN - In the event that the Agency establishes overpayments or erroneous payments made to the Contractor under this contract, the Agency may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the Agency or by doing both.

PRIVACY - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Agency reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Agency. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the Agency for any damages related to the Contractor's unauthorized use of personal information.

PUBLICITY - The Contractor agrees to submit to the Agency all advertising and publicity matters relating to this Contract wherein the Agency's name is mentioned or language used from which the connection of the Agency's name may, in the Agency's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECORDS MAINTENANCE - The Contractor shall maintain books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Agency, personnel duly authorized by the Agency, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE - The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION - The Contractor shall provide right of access to its facilities to the Agency, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

The Contractor shall make available information necessary for Agency to comply with the client's right to access, amend, and receive an accounting of disclosures of their Personal Information according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor's internal policies and procedures, books, and records relating to the safeguarding, use, and disclosure of Personal Information obtained or used as a result of this contract shall be made available to Agency and the U.S. Secretary of the Department of Health & Human Services, upon request.

SAFEGUARDING OF INFORMATION - The Contractor shall not use or disclose Personal Information in any manner that would constitute a violation of federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or any regulations enacted or revised pursuant to the HIPAA provisions and applicable provisions of Washington State law. The Contractor agrees to comply with all federal and state laws and regulations, as currently enacted or revised, regarding data security and electronic data interchange of all Personal Information.

The Contractor shall protect Personal Information collected, used, or acquired in connection with this Contract, against unauthorized use, disclosure, modification or loss. The Contractor shall ensure its directors, officers, employees, subcontractors or agents use it solely for the purposes of accomplishing the services set forth in this agreement. The Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make it known to unauthorized persons without the express written consent of AGENCY or as otherwise required by law. The Contractor agrees to implement physical, electronic, and managerial policies, procedures, and safeguards to prevent unauthorized access, use, or disclosure of data in any form. The Contractor shall make the Personal Information available to amend as directed by Agency and incorporate any amendments into all the copies maintained by the Contractor or its Subcontractors.

The Contractor shall certify its return or destruction upon expiration or termination of this Contract and the Contractor shall retain no copies. If the Contractor and Agency mutually determine that return or destruction is not feasible, the Contractor shall not use the Personal Information in a manner other than those permitted or required by state and federal laws.

Agency reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing, or investigating may include, but is not limited to, "salting" by Agency. Salting is the act of introducing data containing unique but false information that can be used later to identify inappropriate disclosure of data.

The Contractor shall notify Agency in writing within 5 working days of becoming aware of any unauthorized access, use or disclosure. The contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The Contractor agrees to indemnify and hold harmless Agency for any damages related to unauthorized use or disclosure by the Contractor, its officers, directors, employees, Subcontractors or agents.

Any breach of this clause may result in termination of the contract and the demand for return of all Personal Information.

SAVINGS - In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the Agency may terminate the contract under the "Termination for Convenience" clause, without the ten day notice requirement, subject to renegotiation at the Agency's discretion under those new funding limitations and conditions.

SEVERABILITY - The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

SITE SECURITY - While on Agency premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTING - Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Agency. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this agreement are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law.

TAXES - All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

TERMINATION FOR CAUSE – In the event the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency has the right to suspend or terminate this Contract. Before suspending or terminating the Contract, the Agency shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 days, the Contract may be terminated or suspended. In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The Agency reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Agency to terminate the Contract. A termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Agency provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, the Agency may, by 10 days written notice, beginning on the second day after the mailing, terminate this contract, in whole or in part. If this contract is so terminated, the Agency shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION PROCEDURES - Upon termination of this contract, the Agency, in addition to any other rights provided in this contract, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Agency shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Agency may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the Agency against potential loss or liability.

The rights and remedies of the Agency provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agent, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent Agent may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work as shall not have been terminated by the Agent; and
7. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS -

- A. Title to all property furnished by the Agency shall remain in the Agency. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Agency upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Agency upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Agency in whole or in part, whichever first occurs.
- B. Any property of the Agency furnished to the Contractor shall, unless otherwise provided herein or approved by the Agency, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of the Agency which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. If any Agency property is lost, destroyed or damaged, the Contractor shall immediately notify the Agency and shall take all reasonable steps to protect the property from further damage.
- E. The Contractor shall surrender to the Agency all property of the Agency prior to settlement upon completion, termination or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

U.S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL- The agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treas.gov/offices/enforcement/ofac/index.html>. Compliance with OFAC payment rules ensures that the agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the agency will download the current OFAC SDN file and compare it to agency and statewide vendor files. In the event of a positive match, the agency reserves the right to: (1) make a determination of "reasonability" before taking the positive match to a

higher authority, (2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, (3) comply with an OFAC investigation, if required, and/or (4) if the positive match is substantiated, notify the contractor in writing and terminate the contract according to the Termination for Convenience provision without making payment. The agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by authorized representative of the Agency.